IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2831 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PANDYA MADHUSUDAN RADHESHYAM AND OTHERS
Versus
DIRECTOR AND OTHERS

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Appearance :
MR YN OZA for Petitioner no.1,MR HRIDAY BUCH for Petitioners.MR RJ OZA for Petitioners no.2 - 18.
MS FALGUNI PATEL, AGP for Respondents no. 1 - 2.
MR LR PUJARI for Respondent no.3.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 10/10/2006

ORAL JUDGMENT

By filing this petition, the petitioners, who are 18 in number have prayed that appropriate direction may be given to the respondents to

regularize the services of the petitioners treating them as regularly selected from the date of their appointment. It is also prayed that the respondents may be restrained from terminating the services of the petitioners. The petitioners were appointed on the post of Demonstrator Class-II in Government Ayurvedic Hospital. Their appointment orders were issued by Director of Indian Medicine and Homeopathic System, Gujarat State, Gandhinagar. As per the advertisement, which is at page 29, Annexure-A, appointments were to be made on ad-hoc basis till GPSC selected candidates are available or till the period of one year, whichever is less. On the basis of such advertisement, petitioners were appointed. Particulars about their appointment are given at page 30, Annexure-B. As per the same, some petitioners are appointed in 1984 and some are appointed in 1987. It seems that, thereafter, their services were extended from time to time, though no specific orders are finding place in the compilation. Since the petitioners were apprehending termination of their services, they have filed present petition with a prayer that they may be regularized in service and they should be given benefit of seniority etc., in that cadre.

This petition is pending before this Court since 1992 and interim relief is also operating in favour of the petitioners.

Mr.Buch, learned advocate for the petitioners vehemently submitted that though some time back, an advertisement was given by GPSC for filling up the posts which the petitioners are holding, subsequently that advertisement was withdrawn. He, therefore, submitted that the respondents may be directed to continue the petitioners on the post, which they are holding. It is also submitted by Mr.Buch that as per the information received by him from his clients, the Government is contemplating to form a separate cadre of the petitioners

as per the direction given by the Division Bench of this Court in **K.D.Vohra V. Kamleshbhai Gobarbhai Patel** reported in **2003 (2) GLR 1342** and, therefore, till a separate cadre is created by the Government, this petition may be kept pending.

On the other hand, Ms.Falguni Patel, learned AGP submitted that the petitioners were appointed on ad-hoc basis and, therefore, they have no right to hold the post. She further submitted that in view of the directions given by this Court in Special Civil Application No.5415/1997, petitioners' services would be continued till GPSC selected candidate is available or any other employee is transferred from other department to the department where petitioner is serving. She further submitted that even if occasion arises for termination of the services of the petitioner, principle of 'last come first go' will be followed.

I have heard both the learned advocates. It is not in dispute that appointments of the petitioners are ad-hoc and till GPSC selected candidate is available. It is true that the petitioners were continued in service and no attempt was made by the department to fill up the posts through GPSC selected candidates, however, this point now no longer open to challenge as Division Bench of this Court in **K.D.Vohra V. Kamleshbhai Gobarbhai Patel** reported in **2003 (2) GLR 1342** has observed as under in paragraph 26.

> "Though these ad hoc lecturers cannot be directed to be continued contrary to the recruitment rules, nor can they be ordered to be regularised by any mode not warranted by the statutory rules governing the appointments to the cadre of Lecturers, GES, Class II (Collegiate Branch), in the facts and circumstances of the case, we direct that these ad hoc lecturers be treated as a separate class in view of their ad hoc continuance for nearly a decade due to reckless indifference

> in discharge of duties on the part of the executive and be considered for absorption in such posts as may be available with the government or under the authority of the government in consonance with the statutory provisions applicable to such posts. The State Government is also directed to inquire into the serious lapse of not consulting the GPSC while continuing these ad hoc lecturers contrary to Recruitment Rules beyond one year and fix the responsibility for the careless default that has resulted in the ad hoc lecturers being continued for long without consultation with the GPSC and for the posts not having been filled through the GPSC, as per the Recruitment Rules and the General Rules for over a decade, especially when there was no interim order of any Court, as we are told, which could have prevented the process of regular recruitment."

In that view of the matter, prayer for regularization cannot be granted, however, till other suitable candidates are available to replace the petitioners through GPSC, the petitioner's services are required to be continued. Even if the petitioner's services are required to be terminated, principle of 'last come first go' may be followed. If the department wants to replace the petitioners by other candidates by way of transfer, then also, junior most employees should be relieved first by following principle of 'last come first go'.

It is also directed that the department may carry out the exercise in compliance of direction given by the Division Bench of this Court in paragraph 26 of its judgement. Such exercise should be completed within a period of three months from today so that there may not be any further delay. However, it is for the Government to create a separate cadre and it is also for the Government to consider whether the petitioners can be accommodated in such cadre.

Accordingly, this petition is allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar, J.)

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